

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ANTHONY J. FOLINO,  
PETER D. OLIVERI,

Plaintiffs,

v.

ORDER  
07-CV-407

THE TOWN OF NIAGARA, et al.,

Defendants.

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This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1). On August 6, 2007, defendant Michel J. Stachowski filed a motion to dismiss the complaint and on August 31, 2007, plaintiffs, who are proceeding *pro se*, filed a cross-motion for leave to file an amended complaint. On October 11, 2007, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that defendant Stachowski's motion be granted, and that plaintiffs' cross-motion be denied.

Plaintiff filed objections to the Report and Recommendation on October 30, 2007 and defendants filed a response thereto.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and

Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, defendant Stachowski's motion to dismiss the complaint is granted and plaintiff's cross-motion for leave to file an amended complaint is denied.

This case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

*s/ Richard J. Arcara*

HONORABLE RICHARD J. ARCARA  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

DATED: November 27, 2007